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John Sweeney, Esq.
Attorney-Advisor
Internal Revenue Service
1111 Constitution Avenue, NW
Room 4562
Washington, DC 20224

29 October 2010

Dear Mr. Sweeney

RE: NOTICE 2010-60 GUIDANCE UNDER THE FOREIGN ACCOUNT TAX COMPLIANCE ACT GUIDANCE ("FATCA")

I am writing to you on behalf of the government of Guernsey ("the States of Guernsey") to offer comments on Notice 2010-60 and future efforts by the Internal Revenue Service ("IRS") to implement the Foreign Account Tax Compliance Act ("FATCA"). In Notice 2010-60, Treasury and the IRS solicited comments on possible approaches to reduce the burden imposed on participating foreign financial institutions ("FFIs") under FATCA.

Under FATCA, withholding is not required with respect to payments to an FFI that enters into a reporting agreement with the IRS, under which the FFI agrees to comply with the verification and due diligence procedures required by the IRS with respect to the identification of U.S. accounts. An FFI may be deemed to satisfy this requirement if it complies with such procedures as the IRS may prescribe to ensure that the FFI does not maintain any U.S. accounts.

As you know, the States of Guernsey entered into a Tax Information Exchange Agreement ("TIEA") with the United States on 19 September 2002 which came into force on 1 January 2006. Guernsey and the United States have exchanged information on a number of occasions under this agreement. Guernsey is also fully compliant with international standards regarding know-your-customer ("KYC") rules, tax information exchange, and international tax enforcement.

In recognition of Guernsey's cooperation with the United States and its exemplary regulatory regime for financial institutions, Guernsey respectfully suggests that in formulating the rules to implement FATCA, the IRS adopt a special rule for entering into agreements with FFIs located and regulated in Guernsey. Such rule would provide that an FFI located and

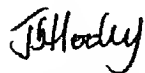
regulated in Guernsey will be considered to have complied with any verification or other customer due diligence procedures required by the IRS with respect to the identification of U.S. accounts for purposes of reporting any U.S. accounts if a U.S.-Guernsey approved external auditor certifies that the FFI's KYC and customer due diligence policies and procedures are adequate to identify U.S. accounts for purposes of reporting U.S. account information to the IRS. This simplified procedure would result in the IRS obtaining the information it needs with much less of an administrative burden placed on Guernsey FFIs.

Guernsey also suggests that the IRS consider adopting a procedure whereby an FFI located and regulated in Guernsey will be considered to have complied with any procedure for ensuring that the FFI does not maintain U.S. accounts if a U.S.-Guernsey approved external auditor certifies that the FFI's KYC and customer due diligence policies and procedures are adequate to ensure that the FFI will not unknowingly maintain any U.S. accounts. Again, this simplified procedure would reduce the administrative burden on Guernsey FFIs.

I am happy to discuss these suggestions further and how they might streamline compliance with FATCA.

Thank you for your consideration.

Yours faithfully,



J G Hooley
Adviser – External Affairs

cc:

Mary Burke Baker, Professional Tax Staff, Senate Finance Committee
Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation
James D. Carroll, Program Manager, Exchange of Information and Overseas Operations
Internal Revenue Service
Aharon Friedman, Esq., Tax Counsel (Minority), Ways and Means Committee
Melissa Mueller, Esq., Tax Counsel, Rep. Richard E. Neal, House Subcommittee on Select
Revenue Measures
Michael F. Mundaca, Esq., Assistant Secretary for Tax Policy, Treasury Department
Robert L. Roach, Esq., Counsel & Chief Investigator, Permanent Subcommittee on
Investigations
Stephen E. Shay, Esq., Deputy Assistant Secretary (International Tax Affairs), Treasury
Department
Nicholas A. Wyatt, Tax and Nomination Professional Staff Member
Senate Finance Committee
Jeffrey Ziarko, Esq., Tax Legislative Counsel, Chairman Sander M. Levin
House Ways and Means Committee

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March 3, 2011

Michael F. Mundaca, Esq.
Assistant Secretary for Tax Policy
U. S. Treasury Department
1500 Pennsylvania Avenue, NW
Room 3120
Washington, DC 20220

Dear Secretary Mundaca:

When you met last year with the Chief Minister of Guernsey, Lyndon Trott, we discussed the on-going peer review of Guernsey's legal and regulatory framework for tax information exchange by the Organization for Economic Co-operation and Development ("OECD"). I am pleased to inform you that the first phase of this peer review process ("Phase 1 Review") for Guernsey has just concluded and confirmed that Guernsey has a comprehensive set of laws and regulations in place to comply with global standards on transparency and tax information exchange.

The Phase 1 Review entitled "Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guernsey 2011,"¹ issued on January 27, 2010, makes clear that Guernsey has followed through on its 2002 commitment to the OECD's principles on transparency and exchange of tax information. The Phase 1 Review notes that "Guernsey has made substantive developments in expanding its EOI [exchange of information] network, predominantly since 2006, and this has been combined with the development of a complementary domestic process to manage requests received from its EOI partners."²

Guernsey is scheduled to undergo a second phase peer review ("Phase 2 Review") in 2012 that will examine the practical implementation of the exchange of information process. The OECD's assessment team will visit Guernsey and evaluate the effectiveness of its Income Tax Office, how it obtains information and how well it exchanges information with Guernsey's tax information exchange agreement ("TIEA") partners. I will forward to you what I expect to be the excellent results of the Phase 2 review when they are released.

¹ A "read-only" copy of *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Guernsey 2011* is posted online by the OECD at: <http://browse.oecdbookshop.org/oecd/pdfs/browseit/2311021E.PDF>. For a printable PDF copy, please contact Linda E. Carlisle at White & Case LLP.

² *Id.* at 8.

Michael F. Mundaca, Esq.

WHITE & CASE

March 3, 2011

I am equally pleased to inform you that on January 14, 2011 the International Monetary Fund ("IMF") issued "Guernsey: Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism," a much-anticipated evaluation of Guernsey's compliance with international standards on anti-money laundering and combating the financing of terrorism ("AML/CFT"). The IMF reports that Guernsey's comprehensive AML/CFT legal framework "provides a sound basis for an effective AML/CFT regime"³ with powerful laws and regulations to freeze and confiscate assets. The IMF Report also notes that "Sound measures are in place to ensure that legal persons incorporated in the Bailiwick are transparent and that accurate, adequate and current information concerning beneficial ownership is available to law enforcement and other competent authorities."⁴

Finally, I want to update you on Guernsey's continuing drive to broaden its global network of TIEAs. On January 19, 2011, Guernsey signed a TIEA with Canada and signed a similar TIEA with Romania on January 17, 2011.⁵ In late 2010, Guernsey also signed a TIEA with China. To date, Guernsey has signed TIEAs with 21 nations, including the United States. TIEA negotiations between Guernsey and more than a dozen other nations are underway.

For your information, attached are an executive summary of the OECD Phase 1 Review, a Guernsey press release on the evaluation, the text of the IMF report on Guernsey and a press release issued by Guernsey on its most recent TIEA signings.

If you have any questions about this material or Guernsey, please contact me at (202) 626-3666 or lcarlisle@whitecase.com.

Sincerely,



Linda E. Carlisle

LEC:jw

Enclosures

³ Guernsey: Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism, at 3. January 2011, IMF Country Report No. 11/13.

⁴ *Id.* at 4.

⁵ All Guernsey TIEAs are posted at: <http://www.gov.gg/ccm/navigation/income-tax/tax-information-exchange-agreements---mutual-agreement-procedures---double-taxation-arrangements/tax-information-exchange-agreements>

SECTION V – INFORMATIONAL MATERIALS

Copy of materials disseminated by the Registrant on behalf of The States of Jersey
To Treasury, State Department and Congressional Committees on the tax and financial
systems of the State of Jersey via US mails and e-mail as indicated in item 12.

Chief Minister's Department

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Mr Michael F Mundaca
Assistant Secretary for Tax Policy
Treasury Department
1500 Pennsylvania Avenue
Washington, DC 20220

Our Ref: GCP/AMV

Date: 10 November 2010

Dear Secretary Mundaca

When I and my colleague Martin de Forest-Brown met with you at the Treasury Department on March 16, 2010 you may recall that among other things we discussed FATCA. At the conclusion of our meeting you kindly extended an invitation to us to provide Jersey's views on FATCA.

In response to your invitation the attached comment has been prepared which we hope you will find helpful. Should the comment give rise to any questions or issues that you believe would benefit from further consideration either in writing or at a meeting we would be pleased to make ourselves available.

With best regards.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Colin Powell".

Colin Powell
Adviser – International Affairs

Direct dial: +44(0)1534 440414
Email: c.powell@gov.je
www.gov.je

Encl.

FOREIGN ACCOUNT TAX COMPLIANCE ACT

(COMMENTS FROM THE GOVERNMENT OF JERSEY)

1. In March, 2010 a delegation from the Government of Jersey met with Treasury Assistant Secretary Michael Mundaca in Washington. At that meeting the delegation referred to the IMF's endorsement of Jersey's high level of compliance with international standards of financial regulation, and to the valuable information being provided to the U.S. tax authorities in response to requests received in accordance with the provisions of the Tax Information Exchange Agreement signed between Jersey and the United States in 2002. The delegation expressed the hope that these factors would be taken into account by the US when applying the Foreign Account Tax Compliance Act to Jersey based financial institutions, and Assistant Secretary Mundaca asked the Jersey delegation to submit in writing their views on how this might best be achieved. This note is in response to that request.
2. Under the Foreign Account Tax Compliance Act, withholding on United States accounts is not required if the Secretary of the U.S. Treasury reaches an agreement with any foreign financial institution (as defined) under which the institution agrees to meet the following reporting requirements -
 - (b)(1) "(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,
 - (B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts, and
 - (C) in the case of any United States account maintained by such institution, to report on an annual basis certain information with respect to such account."
3. The information required to be reported with respect to each United States account maintained by the foreign financial institution includes two matters on which the Secretary has a degree of discretion -
 - (c)(1) "(C) the account balance or value (determined at such time and in such manner as the Secretary may provide), and
 - (D) except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide)."
4. Applying the verification and due diligence procedures that the Secretary may require with respect to the identification of U.S. accounts could be extremely burdensome for a foreign financial institution if it is required to approach every one of its account holders and ask them to show proof of the fact that they are not a U.S. person. For this reason it is proposed that the

extent of the action a foreign financial institution is required to undertake to reach an agreement with the Secretary of State should be risk based, having regard for the factors referred to in the following paragraphs.

5. Certain jurisdictions, such as Jersey, have been independently assessed, by bodies such as the IMF, as to their compliance with international standards of know your customer ("KYC")/customer due diligence ("CDD"). For these jurisdictions, we believe that the assessments can be used to establish whether the KYC/CDD procedures in place - which require identification and verification of customers and of the beneficial owners of legal persons and legal arrangements, and the ongoing due diligence of the business relationship which includes scrutiny of transactions - are such that any information maintenance requirements should be deemed to be met.
6. IRS Notice 2010-60 provides preliminary guidance in which specific comments are sought on verification requirements applicable to participating foreign financial institutions. We suggest that, in respect of the reporting requirements referred to in paragraph 2 above, no additional verification and due diligence procedures should be considered necessary for the identification, documentation and classification of client relationships than those presently undertaken to satisfy prudential regulatory and AML/CFT obligations in respect of KYC/CDD, if -
 - i) the foreign financial institution is located in a jurisdiction that has been assessed by the IMF, the FATF or an FATF style regional body as having a high level of compliance with international standards such that there can be confidence that the KYC rules applied would ensure that any US accounts - and the information required thereon - are known to the foreign financial institution;
 - ii) there is an effective tax information exchange agreement with the US;
 - iii) the KYC procedures in place provide for the identification and verification of individual customers and of the beneficial owners of legal persons and the beneficiaries of legal arrangements, and for accurate and adequate information to be accessible to all relevant authorities if requested; and, if required,
 - iv) the foregoing is certificated by an external auditor, who is approved by the regulatory body of the jurisdiction concerned, to the effect that the identification and verification procedures in place are such as to ensure that the foreign financial institution is able to satisfy the information requirements of the Foreign Account Tax Compliance Act if called upon to do so.
7. We suggest that this also might be a reasonable approach to adopt in respect of a foreign financial institution that is required to satisfy to the Secretary that it complies with such procedures as the Secretary may require to ensure that the institution does not maintain United States accounts.
8. In respect of the information required to be reported on United States accounts, to which paragraph 3 above refers, it is proposed that consideration be given to providing a "safe harbour" from the requirement that the foreign financial institution report on the account balance or value and the gross receipts and

gross withdrawals or payments from the account. We support the proposal that the Secretary apply an appropriate monetary limit to all financial accounts whereby only if that limit is exceeded should the information requested need be reported. We suggest this limit should be higher if the foreign financial institution is based in a jurisdiction, such as Jersey, that is certified as meeting the required standards of KYC and there is evidence of the effective application of a tax information exchange agreement with the US.

9. To the extent required by FATCA, the approach proposed in paragraph 5 above should have equal application to regulated non-financial foreign entities. Trust and company service providers would appear to be covered by the definition of a foreign financial institutions. However, if they are to be considered to be a non-financial foreign entity, it should be noted that in Jersey all trust and company service providers are regulated and are subject to the same requirements for KYC/CDD as banks.
10. Overall Jersey is of the view that in the application of FATCA there should be appropriate recognition of jurisdictions, such as Jersey, that have received an independent assessment undertaken by the IMF showing a level of compliance with international standards of financial regulation, particularly in respect of KYC/CDD, that is equal to if not higher than that of G20 members, and there is evidence of the effective application of a tax information exchange agreement with the US. In addition, for what Jersey suggests should be a risk based approach, there should be appropriate recognition of those jurisdictions where, as in the case of Jersey –
 - the evasion of US taxes is capable of predicated a money laundering offence;
 - any person having reasonable grounds to suspect such evasion would be committing an offence by failing to report it to the relevant authorities;
 - there is a track record of criminal enforcement against persons that have facilitated foreign tax evasion.

Chief Minister's Department
Government of Jersey

November 2010

Chief Minister's Department

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Assistant Secretary for Tax Policy
Treasury Department
1500 Pennsylvania Avenue
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With best regards.

Yours sincerely

A handwritten signature in black ink, which appears to read "Colin Powell".

Colin Powell
Adviser – International Affairs

Direct dial: +44(0)1534 440414
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Encl.

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extent of the action a foreign financial institution is required to undertake to reach an agreement with the Secretary of State should be risk based, having regard for the factors referred to in the following paragraphs.

5. Certain jurisdictions, such as Jersey, have been independently assessed, by bodies such as the IMF, as to their compliance with international standards of know your customer ("KYC")/customer due diligence ("CDD") : For these jurisdictions, we believe that the assessments can be used to establish whether the KYC/CDD procedures in place - which require identification and verification of customers and of the beneficial owners of legal persons and legal arrangements, and the ongoing due diligence of the business relationship which includes scrutiny of transactions - are such that any information maintenance requirements should be deemed to be met.
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 - ii) there is an effective tax information exchange agreement with the US;
 - iii) the KYC procedures in place provide for the identification and verification of individual customers and of the beneficial owners of legal persons and the beneficiaries of legal arrangements, and for accurate and adequate information to be accessible to all relevant authorities if requested; and, if required,
 - iv) the foregoing is certificated by an external auditor, who is approved by the regulatory body of the jurisdiction concerned, to the effect that the identification and verification procedures in place are such as to ensure that the foreign financial institution is able to satisfy the information requirements of the Foreign Account Tax Compliance Act if called upon to do so.
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Chief Minister's Department
Government of Jersey

November 2010

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November 17, 2010

Michael F. Mundaca, Esq.
Assistant Secretary for Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Michael:

In keeping with our commitment to keep you informed of Jersey's current laws and continuing efforts to promote open and effective information exchanges among nations to combat tax evasion, I am pleased to inform you that Jersey signed a Tax Information Exchange Agreement ("TIEA") with China on October 29, 2010. This is the 17th TIEA signed by Jersey. It will enter into force when both countries ratify it, which is expected to occur early next year.

Since we last met in March, Jersey also signed a TIEA with Portugal that was ratified by Jersey in September and awaits ratification by Portugal. Ireland ratified its TIEA with Jersey, allowing it to enter into force on May 5, 2010. Jersey's TIEA with New Zealand has also been ratified, allowing it to enter into force on October 27, 2010. TIEAs negotiated and ready for signature include those with Argentina, Brazil, Canada, India, Indonesia, Italy, Mexico, South Africa, and Turkey.

Attached is an informative chart that lists the status of Jersey's continuing TIEA negotiations. Also attached is a press release issued by Jersey on its most recent TIEA signing with China.

ALMATY ANKARA BANGKOK BEIJING BERLIN BRATISLAVA BRUSSELS BUDAPEST DRESDEN DÜSSELDORF FRANKFURT HAMBURG
HELSINKI HONG KONG ISTANBUL JOHANNESBURG LONDON LOS ANGELES MEXICO CITY MIAMI MILAN MOSCOW MUMBAI MUNICH
NEW YORK PALO ALTO PARIS PRAGUE RIYADH SÃO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON, DC

Michael F. Mundaca, Esq.

WHITE & CASE

November 17, 2010

If you have any questions about this material or Jersey, please contact me at (202) 626-3666 or lcarlisle@whitecase.com.

Sincerely,



Linda E. Carlisle

Attachment

LEC:jw



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- Planning and building
- Staying safe
- Taxes and your money
- Travel and transport
- Working in Jersey

Tax Information Exchange Agreement with China

Tax agreement with the People's Republic of China signed in Jersey

29 October 2010

Jersey's Chief Minister, Senator Terry Le Sueur, has signed a Tax Information Exchange Agreement (TIEA) with Commissioner (Minister), XIAO Jie, of the People's Republic of China today (29 October 2010).

17 TIEAs have now been signed with a range of jurisdictions but this is the first to be signed in Jersey.

Senator Le Sueur said "The fact Commissioner XIAO Jie has come to the Island with five officials is a clear indication of the importance they attach to this agreement. It's a very significant step down the road of an ever strengthening political and business relationship from which we believe both Jersey and the People's Republic of China can benefit.

"China is a very important source of business and a beacon of economic success in a world economy that is still feeling the effects of the global financial crisis. Through the financial services that we offer, Jersey can be a valuable facilitator for China's growing engagement in international investment."

The TIEA will come into force once both governments have completed their respective domestic procedures for the ratification of the agreement.

The TIEA is the same as those previously signed by Jersey with other countries, and provides for the exchange of Information on request, which request has to be formulated in writing in accordance with the terms of the agreement.

In the News

- ▶ Westminster meeting for minister
- ▶ Festive activities start at airport
- ▶ St Clement speed limits to change on Friday
- ▶ Coastguard warns about misuse of flares
- ▶ Treasury Minister's speech to parliamentary meeting
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- ▶ Tax Information Agreement Exchanges

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STATES OF JERSEY**A.TAX INFORMATION EXCHANGE AGREEMENTS (TIEAs)****1. TIEAs signed**

| <u>Countries</u> | <u>Date Signed</u> | <u>Ratified by Jersey</u> | <u>Ratified by other Party</u> | <u>Entry into Force</u> |
|----------------------------|--------------------|---------------------------|--------------------------------|-----------------------------|
| USA | Nov. 2002 | May 2006 | Nov. 2002 | 23 May 2006 |
| Netherlands | June 2007 | Feb. 2008 | Dec. 2007 | 1 March 2008 |
| Germany | July 2008 | Jan. 2009 | July 2009 | 28 Aug 2009 |
| Sweden | Oct. 2008 | March 2009 | Nov 2009 | 23 Dec 2009 |
| Norway | Oct. 2008 | March 2009 | Sept. 2009 | 7 Oct. 2009 |
| Iceland | Oct. 2008 | March 2009 | Oct. 2009 | 3 Dec 2009 |
| Finland | Oct. 2008 | March 2009 | Dec. 2008 | 3 Aug 2009 |
| Denmark | Oct. 2008 | March 2009 | March 2009 | 6 June 2009 |
| Greenland | Oct. 2008 | March 2009 | March 2009 | 6 June 2009 |
| Faroese | Oct. 2008 | March 2009 | June 2009 | 21 Aug 2009 |
| U.K. | March 2009 | July 2009 | Nov 2009 | 27 Nov 2009 |
| France | March 2009 | July 2009 | July 2010 | 11 Oct 2010 |
| Ireland | March 2009 | July 2009 | April 2010 | 5 May 2010 |
| Australia | June 2009 | Nov. 2009 | January 2010 | 5 Jan 2010 |
| New Zealand | July 2009 | Nov. 2009 | Sept 2010 | 27 th Oct 2010 |
| Portugal | July 2010 | Sept. 2010 | (1 st Half 2011) | (1 st Half 2011) |
| People's Republic of China | Oct.2010 | (early 2011) | (1 st Half 2011) | (1 st Half 2011) |

Note: dates in brackets are the expected dates based on latest information from the country concerned.

2. TIEAs initialled/agreed ready for signing:

- Argentina
- Brazil
- Canada
- Indonesia
- India
- Italy
- Mexico

- South Africa
- Turkey

3. TIEAs where negotiations are well advanced with a draft agreement exchanged :

- Czech Republic
- Greece
- Japan
- Spain

4. Jurisdictions contacted from which there has been a positive response and/or initial action has been taken:

- Hungary
- Luxembourg
- Poland
- Russia
- Switzerland

5. Jurisdictions approached but from whom a formal response is awaited:

- OECD Member States;
 - Austria
 - Slovak Republic
- G20 Member States;
 - Saudi Arabia

B. DOUBLE TAXATION AGREEMENTS(DTAs)

1. DTAs signed;

- Malta –
signed 25th Jan 2010
ratified by Malta Feb 2010
ratified by Jersey June 2010
in force – 19th July 2010

2. DTAs agreed ready for signing

- Estonia

3. DTAs where negotiations are well advanced;

- Bahrain
- Belgium
- Qatar

**Enquiries concerning the above should be directed in the first instance to
Colin Powell, Adviser - International Affairs in the Chief Minister's Dept;
tel: 44(0)1534 440414; email: c.powell@gov.je**

**Colin Powell
Adviser - International Affairs**

8 November 2010